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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re N.I., et al., Persons Coming Under the Juvenile Court Law.	B265091
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. N.I., Sr., et al., Defendants and Appellants.	(Los Angeles County Super. Ct. No. CK94969)

APPEAL from an order of the Superior Court of Los Angeles County. Frank J. Menetrez, Judge. Affirmed.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant, N.I., Sr.

Darlene Azevedo Kelly, under appointment by the Court of Appeal, for Defendant and Appellant, R.B.

Office of the County Counsel, Mary C. Wickham, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Stephen Watson, Deputy County Counsel for Plaintiff and Respondent.

N.I., Sr. (father or N.I., Sr.) appeals from the juvenile court's order terminating his parental rights as to his son, N.I. Father contends the court erred in finding he did not establish the parent-child relationship and sibling relationship exceptions to the termination of parental rights set forth in Welfare and Institutions Code section 366.26, subdivisions (c)(1)(B)(i) & (c)(1)(B)(v).[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. 2012

In July 2012, R.B. (mother) and her four children, R.I., N.I., Terrell H., and M.H.,[2] entered a homeless shelter. N.I., Sr. is R.I. and N.I.'s father.[3] The shelter reported the family to the Department of Children and Family Services (Department) because the children had very poor hygiene and smelled of urine, mother was physically and verbally abusive toward the children, and mother appeared to have mental health issues. After the Department interviewed mother and observed her interacting with the children, it became clear that mother rarely changed the children's diapers or otherwise cared for their hygiene. The Department tried to interview R.I., but she would not speak. Although she was seven years old at the time, mother told the Department that R.I. had never attended school. Mother claimed she did not enroll R.I. in school because she was still waiting for a spot to open up at an elementary school she had contacted two years earlier.

According to mother, father had never been seriously involved in the children's lives. When father visited the children about once a month, he usually was in a rush to leave. He also did not contribute much to the family's welfare; he once gave the family two bags of diapers and a talking stuffed animal. When contacted by the Department,

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[1] All undesignated statutory references are to the Welfare and Institutions Code.

[2] R.I., a girl, was born on October 2004; N.I., a boy, was born on November 2009; Terrell, a boy, was born on January 2011; and M.H., a girl, was born on December 2011.

[3] Terrell H. and M.H.'s father is not a party to this appeal.

father reported that he saw the children "every blue moon." He claimed he did not frequently visit the children because he was frustrated that mother would not let him spend time alone with them. Despite his frustration, father never sought a custody order that would have allowed him to spend time alone with the children. As of September 2012, father had not seen the children for two months.

In October 2012, N.I. and Terrell were placed with their non-relative godmother, Barbara S., and R.I. and M.H. were placed with their maternal cousin. R.I. was displaying extremely limited speech and communication skills, which the Department believed were caused in part by mother's failure to enroll her in school.

In November 2012, the court declared the children dependents of the court, finding they fell within section 300, subdivision (b). Specifically, the court found mother routinely had failed to care for the children's hygiene, placing them at a substantial risk of physical harm. The court also found that mother and father had neglected R.I.'s emotional wellbeing and placed her at a risk of suffering serious emotional damage by failing to enroll her in school. The court ordered the Department to provide mother and father reunification services, and it awarded mother monitored, and father unmonitored, visits with the children. As part of their case plans, mother and father were ordered to participate in a parenting program.

B. 2013

In February 2013, the court ordered the Department to refer all four children to a regional center to be assessed for development delays. That same month, R.I. was assessed by the Westside Regional Center. She had severe speech and language impairments, and her assessor described her as " 'functionally non-verbal' " because she was able to articulate very few words.

By March 2013, father had been discharged from his parenting program for failing to attend classes. Father also had failed to visit or contact the children since the disposition hearing, despite the Department's and the children's caregivers' efforts to arrange visits for him. As of March 2013, father had not visited N.I. and R.I. since

July 2012. Father did, however, remain in contact with the Department to continue demanding transportation funds and housing.

In March 2013, the Department reported that mother was visiting the children once per month. Although she had completed a 60-hour parenting class, she had not improved her parenting skills. During visits she would ignore the children while she used her cell phone and listened to music. Mother would not assist the children if they hurt themselves or needed to use the restroom; rather, the children would ask R.I. for help. When mother did pay attention to the children, she was often aggressive or violent. On one occasion, mother threw a rubber ball at R.I.'s head while R.I. walked to the restroom. When the children would fight over toys, mother would sometimes smack them and tell them to shut up.

In May 2013, the Department reported that the children visited each other once a month. Although the Department had requested the children's caregivers to arrange a second sibling visit each month, the caregivers were having difficulty agreeing on when and where the visits would take place. According to the Department, the caregivers did not want to work together to arrange visits. During their visits, the children initially would be excited to see each other, giving each other hugs and kisses. However, after a few minutes, the children would become extremely aggressive, screaming and fighting with each other over food and toys.

As of May 2013, mother continued to fail to engage with the children during visits. Although she would sometimes pay attention to M.H., she frequently used her cell phone and ignored the children. When she did pay attention to the rest of the children, she would scream at them for fighting with each other. Father still had not tried to visit or contact the children since July 2012.

On May 7, 2013, the juvenile court approved the children's attorney's request for a court appointed special advocate to help the children receive appropriate services. N.I., Terrell, and M.H. were assigned the same special advocate, and R.I. was assigned her own special advocate.

In June 2013, Barbara S., N.I. and Terrell's caregiver, reported that Terrell was assessed as having low expressive language ability and vocabulary development. He also had poor oral motor strength, and his coordination appeared delayed. Terrell also was having behavioral problems, frequently biting other children and acting out sexually toward N.I.

During a home visit in June 2013, a Department social worker observed N.I. call Barbara S. "Mama." N.I. had scratches and bruises on his face and elbow, which Barbara S. reported happened when he fell off of his scooter. The Department later concluded that Barbara S. had properly reported the situation and was not at fault for N.I.'s injuries.

By June 2013, mother was not getting along with Barbara S. During a visit at a carnival, mother wore oversized jeans that exposed her underwear. When Barbara S. told mother that she was dressed inappropriately, mother responded, " 'Fuck you, fuck this.' " Shortly after that interaction, mother stopped visiting N.I. and Terrell. As of June 24, 2013, mother had not visited the boys for more than two weeks. When Barbara S. asked mother why she stopped visiting, mother said, " 'I see my boys enough. I'm doing my girls now.' "

In July 2013, mother began visiting N.I. and Terrell again. She remained inattentive during the visits. For example, she pushed N.I. on a swing one time and then left him alone while she played with Barbara S.'s adopted child. Mother again stopped visiting the boys in the middle of July 2013 after a dispute with Barbara S. Mother had appeared at Barbara S.'s house with another man, and, when Barbara S. asked her to leave, mother became upset.

In August 2013, mother was diagnosed with depression and borderline intellectual functioning. She was not eligible for services at a regional center, however, because she was not "mentally retarded." She was referred to a community mental health agency to seek mental health services and vocational training.

On August 12, 2013, N.I., Terrell, and M.H.'s special advocate submitted a report describing her observations of the children and interviews with their caregivers.

Barbara S. told the special advocate that N.I. and Terrell were "very loveable, sweet and polite little boys." N.I. was having trouble sleeping and often would cry during the middle of the night.

At the six-month review hearing in August 2013, the court terminated father's reunification services due to his failure to participate in his case plan and visit the children. The court ordered the Department to conduct an adoptive home study for N.I. and Terrell's maternal great aunt. The court also transferred N.I. and Terrell's education rights to their special advocate.

C. 2014

In January 2014, the Westside Regional Center's chief psychologist wrote to the Department strongly recommending that N.I. and Terrell remain placed with Barbara S. He wrote, "To assist in remediating [N.I.'s and Terrell's] delays, the best chance we have as a system is to ensure to the best of our ability that they remain in a consistent and stable household environment with both care and structure."

In February 2014, the medical director for Los Angeles County's Children's Medical Services submitted reports for N.I. and Terrell. He described N.I. as having "significant (probable) post-traumatic stress-related behaviors," which were caused by his parents' neglect. He also diagnosed N.I. with asthma, which his previous doctor had not properly treated.

The Department reported that N.I. was thriving in his placement with Barbara S. He was attending preschool where he had an IEP on file, and his speech was clear. He also was participating in gymnastics at a local recreation center. N.I. had been evaluated by Westside Regional Center, but he did not meet the requirements to obtain services. It was recommended that he be reevaluated at six years old.

The boys and girls were visiting each other every other weekend. Although mother was visiting the girls about once a week, she had not regularly visited N.I. and Terrell for several months. As of February 2014, mother had visited the boys three times in the last five months. During her visits with R.I. and M.H., mother continued to engage in inappropriate behavior. For example, at M.H.'s birthday party, she struck one

of the caregivers' sons. Father had not made any effort to visit or contact the children since July 2012.

The Department also reported that the home of N.I. and Terrell's maternal great aunt had been approved for placement. However, the Department did not want to place N.I. and Terrell with their maternal great aunt because they were extremely bonded with Barbara S. and referred to her as "Mama," and the maternal great aunt had never visited, or asked to visit, the children since they came to the Department's attention.

In February 2014, N.I. and Terrell's special advocate reported that N.I. was enjoying attending school, but that he was having behavioral problems in class. He was having difficulty paying attention and following rules, and he would disrupt his classmates' school work and scribble on tables.

In March 2014, one of the Department's social workers contacted father. Father stated that he could visit the children on weekends only, so the social worker recommended that he attend their sibling visits on the weekends. Father refused to take the social worker's contact information, saying, " 'I don't need your number because there's nothing you can do for me.' "

N.I. and Terrell's special advocate reported that Barbara S. was taking N.I. and Terrell to the park every day to burn off energy. Barbara S. had begun to treat N.I.'s night terrors, and she remained in regular contact with his pediatrician.

At the twelve-month review hearing on March 27, 2014, the court terminated mother's reunification services and set a selection and implementation hearing pursuant to section 366.26.

By July 2014, mother and father were visiting the children again. Most visits occurred at a fast-food restaurant. Police were called during two visits because mother and father had yelled and cursed at each other. Barbara S. reported that after visiting with mother and father, N.I. would tell people he only had to obey his mother, and he would refuse to respond to his name, telling people he wanted to be called "NoNo."

In July 2014, N.I.'s special advocate reported that he had been diagnosed with attention deficit hyperactive disorder (ADHD). Although N.I.'s behavior and academic

performance at school had begun to improve, he continued to act aggressively toward other students. On one occasion, he bit another student, drawing blood. N.I.'s special advocate believed that his poor behavior at school was often triggered by visiting with his parents, especially mother.

By July 2014, Barbara S. had enrolled N.I. and herself in a six-month parent-child interactive program. She was also participating in a behavior management class with Terrell.

By August 2014, N.I. was attending kindergarten, and he and Barbara S. had begun participating in the parent-child interactive program. N.I.'s treatment team for the interactive program did not believe it could meet N.I.'s needs, however, so it referred him to a more intensive program.

Mother and father continued to visit the children. Because mother continued to fail to interact with or properly supervise her children, the Department would not allow her to have unmonitored visits.

In August 2014, Barbara S. reported that N.I. and Terrell were "out of control." N.I. had thrown one of Barbara S.'s televisions on the floor, and Terrell had pulled her curtains off of the wall. Terrell was also physically aggressive toward other people. On one occasion, Terrell had tried to penetrate N.I. He had also bitten N.I. and hit Barbara S. Terrell's pediatrician believed that he became more defiant and aggressive immediately after visiting with mother. As a result, the pediatrician recommended that the court suspend mother's visits with the boys.

The Department requested additional time to evaluate potential adoptive homes for N.I. and Terrell because Barbara S. was having difficulty controlling their behavior, and she had postponed several home study interviews with the Department. According to the Department, Barbara S. had begun to doubt whether she wanted to adopt N.I. and Terrell.

As of September 2014, mother and father continued to visit the children. Mother still failed to supervise the children during her visits, and she usually paid attention to only the girls. When she heard one of the boys refer to Barbara S. as his "mama," she

shoved him and told the boys, " 'she is not your mamma.' " The Department shared the pediatrician's belief that the boys' visits with mother contributed to their aggressive behavior.

In September 2014, N.I. and Terrell's special advocate reported that the boys were improving their behavior, especially at home. Terrell was able to play sports with other children without becoming physically aggressive. The boys' visits with R.I. and M.H. were also going very well. The special advocate described one visit between the children as "wonderful."

One of the Department's social workers interviewed the boys' maternal great aunt about whether she was committed to caring for the boys long term. She stated that she was interested in temporary placement only because she believed mother was going to regain custody of the boys. When asked whether she was interested in having all four children placed in her home, she responded, " 'Only the boys, the girls are already placed.' "

On September 11, 2014, R.I. and M.H.'s caregiver informed the Department that she did not want to adopt the girls, but that she was interested in pursuing a legal guardianship. She did not want the court to terminate the parents' parental rights, and she believed she would be able to provide permanency to the girls through a guardianship.

In late October 2014, the Department reported that mother and father had been visiting the children for two hours every Saturday for one month. During one visit, mother struck Terrell on his shoulder with her open hand. When the Department questioned Terrell about the incident, he said, " 'Mama [] hit me. [Mother] is bad.' "

N.I. and Terrell's special advocate reported that the boys continued to engage in concerning behavior. N.I.'s teacher reported that he was often emotional and would flinch every time she tried to correct his behavior, as if he thought she was going to hit him. Terrell's behavior therapist and special education teacher were concerned about Terrell's behavior following visits with mother. Terrell would become more aggressive after visiting with mother, often throwing objects and biting and yelling at people.

The special advocate also reported that N.I.'s behavior was improving in many respects. He was excelling at gymnastics, and he enjoyed going to the park with Barbara S. He also loved being read to and would ask the special advocate to read to him every time she visited him. He was also very helpful and polite, offering to bring the special advocate a glass of water during visits.

By late October 2014, Barbara S. had informed the Department that she was committed to providing a permanent home for N.I. and Terrell. She had submitted several documents to initiate the adoption process, resumed the home study process, and scheduled an adoption interview for November 2014.

On October 29, 2014, the court ordered adoption as the permanent plan for N.I. and Terrell and legal guardianship as the permanent plan for R.I. and M.H. The court ordered the Department to again assess the children's maternal great aunt for possible placement. The court also relieved N.I. and Terrell's special advocate and transferred their education rights to Barbara S.

One month later, the Department recommended that N.I. and Terrell should not be placed with their maternal great aunt because they were emotionally attached to Barbara S., and removing them from her care would be detrimental to their wellbeing. The Department also reported that mother continued to visit the children on a regular basis, and that father had missed two visits in the last month.

D. 2015

On January 27, 2015, the court held a selection and implementation hearing. The court granted the girls' caregiver legal guardianship of R.I. and M.H., and it did not terminate the parents' parental rights as to R.I. and M.H. The court then terminated jurisdiction over R.I. and M.H. The court continued the selection and implementation hearing as to N.I. and Terrell to allow the Department to complete its adoption home study.

On April 9, 2015, the Department approved Barbara S.'s home for adoption. The Department reported that N.I. and Terrell were "very bonded" with Barbara S. and referred to her as " 'Mama.' " Barbara S. had enrolled the boys in an intensive

treatment program, and she had enrolled Terrell in in-home behavior therapy. She also involved the boys in many cultural and academic activities, enrolling them in a children's cooking class and frequently taking them to science and history exhibits, museums, and aquariums.

The Department's social worker observed that N.I. and Terrell continued to engage in aggressive behavior. The social worker opined that N.I.'s aggressive behavior may result from the fact that he is not enrolled in the same type of behavioral therapy programs as Terrell and, as a result, is not learning to control his behavior.

The Department was arranging visitation for mother and father every other week, but they were not regularly attending visits. Father had not visited N.I. and Terrell since February 2015, even though the Department was providing him with monthly transportation funds. Mother had not visited the boys since early March 2015. Terrell told one of the Department's social workers that he did not want to visit mother because she only paid attention to N.I.

In June 2015, the Department reported that mother had begun visiting the boys again, but that she had missed three visits during the past month. When mother did visit with the boys, she did not actively engage with them. N.I. and Terrell also did not try to engage with mother, and they would frequently ask the Department's social worker if they could go home. During one visit, N.I. and Terrell refused to hug mother, and immediately after another visit, they had diarrhea.

As of June 2015, father had visited the boys only three times since early May 2015. On one occasion, he told the Department he could not visit the boys because it was raining. However, the Department reported that it did not rain that day.

In June 2015, the Department received reports from the boys' therapist and a representative from the Los Angeles County Human Services Agency suggesting that the boys' behavior continued to digress immediately after visiting with both parents. The boys' therapist reported that after N.I. and Terrell visited both parents, they became more physically aggressive and socially withdrawn and were more emotionally sensitive.

On June 4, 2015, N.I. and Terrell's pediatrician submitted a letter recommending the court suspend mother's and father's visitation rights. She believed that N.I. and Terrell suffered emotional trauma each time they visited with mother and father, and she observed that they had made "steady and remarkable progress" at home and school during periods when neither parent visited the boys.

On June 15, 2015, the court held a selection and implementation hearing as to N.I. and Terrell. Father was the only person who testified at the hearing. He admitted that he had not consistently visited N.I. in the months leading up to the hearing, but he believed that he had nevertheless formed a strong bond with the child. He testified that he brought N.I. toys during their visits, and that N.I. called him "daddy" and hugged and kissed him. Father would play with N.I. during visits, doing gymnastics and pushing him on the swing. According to father, N.I. would ask why he could not go home with father at the end of each visit.

Father's counsel requested that the court not terminate father's parental rights because he had established the parent-child relationship exception to the statutory preference for adoption pursuant to section 366.26, subdivision (c)(1)(B)(i). He argued father and N.I. had formed a significant parent-child relationship and termination of father's rights would be detrimental to N.I. The Department's and the boys' attorneys opposed father's request. They argued that N.I. and Terrell would benefit from adoption by remaining in a permanent and stable home with Barbara S., and that termination of mother's and father's parental rights would not be detrimental to their wellbeing.

The court found by clear and convincing evidence that N.I. and Terrell were likely to be adopted, and it terminated mother's and father's parental rights. As to father's request, the court found that no exception to the statutory preference for adoption, including the parent-child relationship exception, applied to the boys' case. The court also terminated mother's and father's visitation rights, finding that their visits

with N.I. and Terrell were detrimental to the boys' emotional wellbeing. Father appeals.[4]

DISCUSSION

A. Governing Law and the Standard of Review

Section 366.26 governs the court's selection and implementation of a permanent placement plan for a dependent child whose parents' efforts at reunification have failed. The express purpose of section 366.26 is to "provide stable, permanent homes" for dependent children, and the legislature has expressly designated adoption as the preferred permanent plan once reunification services have been terminated. (§ 366.26, subd. (b).) To implement a plan of adoption, the court must find by clear and convincing evidence that the dependent child is adoptable. (§ 366.26, subd. (c)(1).) Once the court has done so, it must terminate parental rights, unless it finds termination of those rights would be detrimental to the child under one or more statutorily defined exceptions. (§ 366.26, subd. (c)(1)(A)-(B).) " '[T]he burden is on the party seeking to establish the existence of one of the section 366.26, subdivision (c)(1) exceptions to produce that evidence.' [Citation.]" (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314 (*Bailey J.*).)

In this case, the juvenile court found N.I. was adoptable and that he would suffer no detriment from the termination of his parents' rights. Father contends the court erred in terminating his rights because he established the parent-child relationship and sibling relationship exceptions to the statutory preference for adoption. (See § 366.26, subds. (c)(1)(B)(i) & (c)(1)(B)(v).) Father and the Department dispute which standard we should use to review the juvenile court's findings that no exceptions to the termination of father's parental rights apply to N.I.'s case. Father argues we should review the court's findings for substantial evidence. The Department contends we

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[4] Mother filed a notice of appeal from the court's order terminating her parental rights as to her sons, but her counsel filed a brief that raised no issues. Although mother submitted a supplemental letter brief which disputed the Department's evidence against her and challenged Barbara S.'s parenting abilities, her brief raises no arguable issues. Accordingly, we dismiss her appeal pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835.

should apply a hybrid standard, first reviewing the court's determinations that no beneficial parent and sibling relationships existed for substantial evidence, and then reviewing the court's determinations that no compelling reason for determining that termination of father's parental rights would be detrimental to N.I. for abuse of discretion.

California courts have diverged in their view about the applicable standard of review for an appellate challenge to a juvenile court ruling rejecting a claim that an adoption exception applies. Most courts apply the substantial evidence test to the juvenile court's finding that a parent has not established the parent-child relationship and sibling relationship exceptions to the statutory preference for adoption. (See *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 (*Jasmine D.*) [observing that "courts . . . have routinely applied the substantial evidence test to the juvenile court's finding under section 366.26, subdivision [(c)(1)(B)(i)]"]; *In re Jacob S.* (2002) 104 Cal.App.4th 1011, 1019 [applying substantial evidence to court's finding that sibling relationship exception did not apply]; *In re Megan S.* (2002) 104 Cal.App.4th 247, 251-255 [same]; see also Seiser and Kumli, Cal. Juvenile Courts Practice and Procedure (2015) § 2.171 (5)(b)(ii)(A) & (5)(b)(vi).) However, in *Jasmine D.*, the First District held an abuse of discretion standard applies, likening the juvenile court's decision whether to terminate parental rights and select adoption as the permanent plan to a custody determination, which is typically reviewed for abuse of discretion. (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351.) Finally, several courts have recently applied a hybrid standard, reviewing the juvenile court's finding that a sufficient parent-child or sibling relationship exists for substantial evidence, while reviewing the court's determination that no compelling reason for determining termination of parental rights would be detrimental to the dependent child for an abuse of discretion. (See *Bailey J.*, *supra*, 189 Cal.App.4th at pp. 1314-1315; *In re K.P.* (2012) 203 Cal.App.4th 614, 621-622 (*K.P.*) [finding the *Bailey J.* approach "persuasive" and adopting its "composite standard of review" to test the juvenile court's finding that the parent-child relationship exception did not apply].)

Here, it is not necessary for us to determine which standard of review is appropriate. Because this is not a close case, and because the practical differences between the standards are not significant (see *Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1351), we would reach the same conclusion under all three standards of review.

B. The Parent-Child Relationship Exception Does Not Apply

Section 366.26, subdivision (c)(1)(B)(i) provides an exception to the statutory preference for adoption if the court finds a "compelling reason" for determining that termination of parental rights would be detrimental to the dependent child because the "parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) To establish the "benefit" prong of the exception, the parents must prove their relationship with the child " 'promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' [Citations.]" (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

The nature of the relationship between the parents and child is key; it is not sufficient to show that the child derives some benefit from the relationship or shares some " 'emotional bond' " with the parents. (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) "To overcome the preference for adoption and avoid termination of the natural parent's rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466 (*Angel B.*), italics removed.) Put another way, the parents need to show they occupy a " 'parental role' " in the child's life. (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.)

"The relationship that gives rise to this exception to the statutory preference for adoption 'characteristically aris[es] from day-to-day interaction, companionship and shared experiences. Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.' [Citation.] Moreover, '[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights

will prevail over the Legislature's preference for adoptive placement.' [Citation.]" (*K.P.*, *supra*, 203 Cal.App.4th at p. 621.) Factors to consider in determining whether the exception applies include: "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs. . . . " (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*).)

As we discuss below, father did not establish that he maintained regular visitation and contact with N.I., that he occupied a parental role in N.I.'s life, or that continuing his relationship with N.I. would outweigh the benefits N.I. would gain from a permanent and stable adoptive home. Accordingly, the court properly determined that N.I. would not suffer detriment if father's parental rights were terminated.

Before the family came to the Department's attention, father hardly was involved in N.I.'s life. He never had custody of N.I., and he did not significantly contribute to N.I.'s care. The only evidence father contributed to N.I.'s care was that on a single occasion he brought mother two bags of diapers and a stuffed animal. He did not provide money, food, or shelter for N.I. In addition, he rarely visited N.I., admitting that he saw him "every blue moon."

Even once he became aware of N.I.'s dependency case, father failed to establish regular contact and visitation. N.I. was detained in August 2012, and the court exercised jurisdiction over him in November 2012, yet father did not try to visit until March 2014. In other words, father did not make an effort to visit for one-and-a-half years of the most formative period of N.I.'s life. As father acknowledges in his opening brief, his failure to visit N.I. during this period was not for a lack of effort from the Department or N.I.'s caregivers. After the court sustained jurisdiction over N.I., the Department contacted father numerous times about setting up visits and N.I.'s caregivers made N.I. available for visits at the Department's office. Although father remained in regular contact with the Department to continue receiving his transportation funds, he did not use those funds to visit N.I. before March 2014.

Despite the fact that father began visiting N.I. after his reunification services were terminated, his visits were inconsistent. For example, father did not visit N.I. between February and April 2015, and he visited N.I. only three times during the two months before the court terminated his parental rights. Father complains that some of his lapses in visitation were caused by Barbara S.'s occasional unwillingness to make N.I. available. However, father failed to take advantage of numerous opportunities to visit N.I. when Barbara S. regularly made him available during the beginning and final stages of his dependency case. On these facts, the court properly found father did not maintain regular visitation and contact with N.I.

The court also properly found any benefits N.I. would gain from continuing his relationship with father did not outweigh the benefits he would gain in a permanent and stable home with Barbara S. While father testified that N.I. called him "daddy" and sometimes asked to go home with him, there is no other evidence that father actually occupied a parental role in N.I.'s life or that he and N.I. shared a "substantial, positive emotional attachment" such that N.I. would be greatly harmed by the termination of father's rights. (See *Angel B., supra*, 97 Cal.App.4th at p. 466.) Indeed, in the months immediately before the selection and implementation hearing, N.I.'s therapist and a representative from the county's Human Services Agency observed that N.I.'s visits with both of his parents were detrimental to his emotional development, and N.I.'s therapist observed that N.I. made "steady and remarkable progress" when he did not visit with either parent. Further, by the time of the implementation and selection hearing, N.I. had formed an extremely close bond with Barbara S., and she had demonstrated that she was able to provide N.I. the constant care and attention that he needed, something that father never demonstrated he was willing to do.

C. The Sibling Relationship Exception Does Not Apply

i. Father forfeited application of the sibling relationship exception by failing to raise it at the selection and implementation hearing

The Department contends father forfeited any claim that the sibling relationship exception applies to N.I.'s case. The Department argues that because father did not request the court to consider the sibling relationship exception, he cannot argue on appeal that the court erred by not finding the exception applies in N.I.'s case. While acknowledging he did not expressly argue the exception applies, father contends he preserved the issue for appeal when his counsel requested the court not terminate his rights so that N.I. and Terrell "may continue to have a bond with their sisters."

A parent must raise an exception to the termination of parental rights at the selection and implementation hearing; otherwise, the issue is forfeited on appeal. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 403 (*Erik. P.*).) "If a parent fails to raise one of the exceptions at the hearing, not only does this deprive the juvenile court of the ability to evaluate the critical facts and make the necessary findings, but it also deprives this court of a sufficient factual record from which to conclude whether the trial court's determination is supported by substantial evidence." (*Ibid.*)

We agree with the Department that father did not raise the sibling relationship exception at the selection and implementation hearing. At the hearing, father's counsel argued: "On behalf of the father he would ask the court to find [section 366.26, subdivision] (c)(1)(B)(i) exception does exist and the court then should order legal guardianship." However, father's counsel never requested the court to also find the sibling relationship exception applied to N.I.'s case. Although he argued that maintaining father's parental rights would allow N.I. and Terrell to continue their relationships with their sisters, he did so to support his argument that the parent-child relationship exception applied by pointing to the fact that father was able to visit the boys' sisters more frequently because they were in a legal guardianship. Father's counsel never addressed any of the factors specified in section 366.26,

subdivision (c)(1)(B)(v) to argue that termination of his parental rights would cause substantial interference with N.I.'s sibling relationships, and he did not present, or direct the court's attention to, any evidence that supported applying the exception to N.I.'s case. (See *Erik P., supra,* 104 Cal.App.4th at p. 403.) Thus, father forfeited this issue on appeal.

ii. Father did not establish the sibling relationship exception

Even if father did not forfeit the issue, he has failed to demonstrate the sibling relationship exception applies in N.I.'s case. Section 366.26, subdivision (c)(1)(B)(v) provides an exception to adoption where "the juvenile court determines that there is a 'compelling reason' for concluding that the termination of parental rights would be 'detrimental' to the child due to 'substantial interference' with a sibling relationship." (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) The statute places a heavy burden on the party advocating the exception to overcome the statutory preference for adoption. (*In re Celine R.* (2003) 31 Cal.4th 45, 61.) The language of the statute "focuses exclusively on the benefits and burdens to the adoptive child, not the other siblings." (*Daniel H., supra,* 99 Cal.App.4th at p. 813.) "[T]he application of this exception will be rare, particularly when the proceedings concern young children whose needs for a competent, caring and stable parent are paramount." (*In re Valorie A.* (2007) 152 Cal.App.4th 987, 1014.)

"Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952 (*L.Y.L.*).) In determining whether the exception applies, a court should consider "the nature and extent of the relationship, including . . . whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child's best interest." (§ 366.26, subd. (c)(1)(B)(v).) If the court determines terminating parental rights would substantially interfere with the sibling relationship, "[t]he court must balance the beneficial interest of the child in maintaining the sibling

relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer. [Citation.]" (*L.Y.L.*, *supra*, 101 Cal.App.4th at p. 951.)

Here, there is no reason to conclude that termination of father's parental rights would be detrimental to N.I. due to substantial interference with a sibling relationship. To be sure, there is evidence that N.I. shared a positive relationship with his sisters. Although the boys sometimes fought and argued with their sisters during visits, the children were usually excited to see each other, and the Department described one of their visits in late 2014 as "wonderful." Nevertheless, by the time of the selection and implementation hearing, N.I. and Terrell had spent the majority of their lives in a home separate from their sisters. In fact, from the time they found stable and nurturing homes, the boys and girls never lived together. In addition, there is no evidence that N.I. was negatively affected by being placed in a home separate from his sisters or that he had expressed a desire to live with them. Further, by the time of the selection and implementation hearing, the boys' and girls' caregivers had maintained a regular visitation schedule for the children, and the record provides no indication that the sibling visits will stop once N.I. and Terrell's adoption becomes final.

Even if N.I. does not remain in contact with his sisters, there is ample evidence that the benefits he would gain from remaining in a permanent and stable adoptive home with Barbara S. outweigh any benefits he would receive from being placed in a potentially tenuous legal guardianship or foster home to ensure ongoing sibling contact. (*L.Y.L.*, *supra*, 101 Cal.App.4th at p. 951.) As many of the medical professionals, school officials, and Department social workers who were involved in N.I.'s dependency case determined, finding a permanent and stable home was essential to N.I.'s development. As of the selection and implementation hearing, Barbara S. was committed to achieving this goal for N.I., completing an adoption home study and providing him the extensive support he needed but had never attained before coming to the Department's attention. The court was certainly justified in finding it was in N.I.'s best interests to remain in a permanent and stable adoptive home with Barbara S.

DISPOSITION

As to father, the juvenile court's order terminating his parental rights is affirmed. Mother's appeal is dismissed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

JONES, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.